

August 25, 2020

Mary Nichols, Chairwoman
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Concerns with Unintended Impacts of *Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments* on Public Transit Agencies

Chairwoman Nichols and Board Members:

As you know, the California Transit Association and the California Air Resources Board spent four years negotiating the terms of the Innovative Clean Transit (ICT) regulation. The ICT regulation — the first of its kind in the country — envisions the widespread deployment of zero-emission bus (ZEB) technology, with the goal of electrifying all transit buses in California by 2040.

Throughout our negotiations, and as the regulation was finalized, we maintained that we had significant concerns about the cost and performance of ZEB technology as well as the availability of funding – *especially* over the long-term – necessary to support the transition. However, at the time of the regulation’s adoption – and due to the numerous flexibility options you built into the regulation at our urging – we committed to doing all we could to advance its goals and to further the cause of electrification for the broader transportation industry.

In the two years since the ICT regulation was adopted, we have attempted to live up to our commitment, by:

- Reconstituting our Zero-Emission Bus Task Force to serve as our internal policy advisors and to develop a multi-year educational program on ICT regulation implementation;
- Co-hosting the ZEB Showcase and Symposium in partnership with ARB in 2019 and developing the zero-emission transit session track for ARB’s Moving California to a Clean, Equitable Transportation forum in 2020;
- Co-hosting webinar series on fuel cell electric buses and battery-electric buses with the California Hydrogen Business Council and CALSTART in 2019, respectively;
- Becoming chief backers of various legislative efforts to establish an ongoing appropriation for HVIP;
- Advocating for – and securing – a state sales tax exemption for HVIP-eligible ZEBs;
- Engaging the California Public Utilities Commission on the development of its

Transportation Electrification Framework to support the expedited review and approval of future investments in infrastructure by the Investor-Owned Utilities;

- Securing a seat on the California Energy Commission’s Clean Transportation Advisory Committee to steer investments in clean transportation infrastructure;
- Advising Congress on the requirements for a new zero-emission bus grants program to be included in the next federal surface transportation reauthorization bill; and
- Devoting entire session tracks at our Fall Conferences to battery-electric and fuel cell electric bus technologies.

These efforts underscore our Association’s commitment to fulfilling the goals of the ICT regulation, but also our unwavering belief that – to be successful – its implementation will require an “*all hands on deck*” approach from the industry and sustained investment by the state.

It is against this backdrop that we regrettably write to you today to express our concerns with the “*Heavy-Duty Engine and Vehicle Omnibus Regulation and Associated Amendments*” now before you. This regulation is designed to reduce emissions from internal combustion engines – itself, a reasonable objective – but will have the practical impact of driving Cummins, the dominant manufacturer of diesel transit bus engines, out of the California market for diesel transit bus engines, beginning in 2024. This seismic shift in the technologies available for purchase by California’s transit agencies, spurred by the regulation and communicated to California’s transit agencies by Cummins last week, would have profound impacts on transit operations, forcing transit agencies to forego necessary capital replacements, operate diesel buses beyond their useful life, or accelerate diesel bus purchases. Additionally, it would invalidate hard fought for – and *sensible* – provisions included in the ICT regulation at the urging of our Association and through multilateral negotiations with environmental groups.

For example, the ICT regulation acknowledges that transit agencies may face challenges in their transition to zero-emission bus technologies. As such, it provides ARB’s Executive Officer with the authority to grant a one-year exemption to the zero-emission bus purchase mandate to a transit agency that demonstrate any of the following: delays in bus delivery or infrastructure buildout; the unavailability of ZEBs with sufficient range to meet the transit agency’s daily mileage needs; the unavailability of ZEBs that meet Americans with Disabilities Act requirements or any other federal, state or local law, regulation or ordinance; or, financial hardship at the transit agency, including the inability to secure funding to offset the incremental cost of a ZEB over a conventionally-fueled equivalent bus. In granting an exemption, the Executive Officer is authorized to permit the transit agency to purchase a conventionally fueled transit bus. **The availability of this exemption was critical at the time of the ICT regulation’s adoption, but has become increasingly important, given the impact of the COVID-19 pandemic on transit budgets.**

Additionally, the [board resolution](#), supporting the ICT regulation’s adoption, directs ARB’s Executive Officer to provide the ARB Board with a comprehensive review of the regulation at least one year prior to the initiation of any ZEB purchase requirement. The comprehensive review is designed to assess the following issues to determine whether or how ARB should proceed with the imposition of the ICT regulation’s purchase mandate; the cost, performance and reliability of ZEBs; the availability of incentive funding; infrastructure necessary to support ZEB deployment; the extent of job creation resulting from the rule; the deployment status of ZEBs and related technologies; and, the barriers to ZEB deployment.

If the heavy-duty omnibus regulation is allowed to proceed, as currently drafted, a transit agency, operating diesel buses, would *technically* still be able to submit a request for an exemption from the zero-emission bus purchase mandate, but they would be unable to proceed with the purchase of a diesel bus or diesel bus engine, beginning in 2024. This reality, and the impracticality of such an agency purchasing a compressed natural gas bus or engine, negates the history and intent behind the creation of the exemption process and eliminates the practical benefit of the exemption to transit agencies operating diesel buses.

Finally, while the heavy-duty omnibus regulation doesn't itself rescind ARB's commitment to conducting a comprehensive review of zero-emission bus technology before the ICT regulation's purchase mandate goes into effect, it would render the process an idle exercise. For clarity, consider that should the comprehensive review find that the performance of ZEB technology is inadequate, the cost of the technology is too high to be practical, or that transit agencies lack incentive funding to effect the transition without compromising transit service, ARB could not relax or refine the ICT's regulation in a manner that provides relief to transit agencies operating diesel buses.

As an Association, we believe the clearest way to address the unintended consequences of the heavy-duty omnibus regulation is to strike the references to urban buses from the heavy-duty omnibus regulation entirely or to otherwise shield diesel engines and hybrid powertrains from the new emission standards being promulgated for model years 2024 and beyond. These proposed amendments to the regulation would keep Cummins in the California market for diesel transit bus engines, honor the timelines for transition to zero-emission bus technologies agreed to in the ICT regulation, and ensure that transit agencies operating diesel buses are able to take full advantage of the flexibility provisions written into the ICT regulation. In elevating this request to you, I will note that we have had productive conversations with your staff regarding our concerns and hope you will provide direction to them to accept our proposed amendments or to find a solution, through discussion with us, equally acceptable to the transit industry.

As always, we thank you for your consideration. Please feel free to contact me at 323-594-6342, if you have any questions.

Sincerely,



Michael Pimentel
Deputy Executive Officer

cc: Virgil Welch, Senior Advisor, Office of the Chair
Steve Cliff, Deputy Executive Officer, California Air Resources Board
Jack Kitowski, Chief, Mobile Source Control Division
Sydney Vergis, Assistant Chief, Mobile Source Control Division